Viacom Cablevision of Dayton, Inc. and Constance J. Adkins, Petitioner and Teamsters Local Union 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 9-RD-1105

26 August 1983

## DECISION AND CERTIFICATION OF RESULTS OF ELECTION

## By Chairman Dotson and Members Zimmerman and Hunter

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objections to an election held on 24 September 1982, and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Hearing Officer's findings and conclusions only to the extent consistent herewith.

The Hearing Officer overruled the Union's Objections 3 and 5 but recommended sustaining Objection 1.<sup>2</sup> The Employer excepts to the Hearing Officer's findings. In Objection 1, the Union contends the Employer made unlawful promises to grant wage increases if the employees voted against the Union.

The Hearing Officer, relying primarily on Etna Equipment & Supply Co., 243 NLRB 596, 597 (1979),<sup>3</sup> found that the Employer went to "extraor-

<sup>1</sup> The election was conducted pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 9. The tally was 27 for, and 31 against, Teamsters Local Union 957. There were no challenged ballots.

<sup>2</sup> On 26 October 1982 the Union filed a request to withdraw its Objections 2 and 4. The withdrawal request was approved by the Regional Director in his report.

dinary efforts" to show employees that some of its nonunion systems had greater benefits than its union systems. Accordingly, he found the Employer had impliedly promised increased benefits should the employees reject the Union, and he recommended sustaining Objection 1.

We disagree. According to the credited testimony of Employer witnesses, several small group meetings were held with various groups of employees. The purpose of these meetings was to explain the Employer's position on the upcoming election and to answer any questions concerning the personnel review process, fringe benefits, and company literature which had been distributed to employees. This literature consisted of, inter alia, a letter showing that wages in the Employer's Cleveland and Long Island (nonunion) systems were higher than in the unionized Dayton Viacom system; a letter demonstrating that the employees who had voted to decertify their union in one Viacom system had done better than the employees in another Viacom system who had decided to remain represented; a third letter stating that wages in nonunion systems of Viacom have always been increased yearly. This letter was accompanied by a wage comparison chart of 10 nonunion systems and Viacom Dayton. The overall effect of the charts was to show that wages in Viacom's nonunion systems were higher than wages in the union Dayton system. The Employer witnesses credibly denied making any guarantees or promises about what would happen if the Union were voted out. In fact, they repeatedly told employees they were not making any promises or guarantees. The general manager admitted, however, saying that if the Union were voted out, the Company would have a 1-year opportunity before another union could come in, to run the system right—"that [he'd] be a fool if [he] didn't make sure everything was run fairly here in order to keep people happy and keep a union out, that it was their one opportunity."

Contrary to the Hearing Officer, we do not find any implied promise in the Employer's letters, comparison charts, or statements. A comparison of wages is not *per se* objectionable; the question is, was there a promise, either express or implied from the surrounding circumstances, that wages would be adjusted if the Union were voted out. Here, pursuant to employee requests for the information, the Employer did no more than truthfully inform the

<sup>&</sup>lt;sup>8</sup> In Etna Equipment & Supply Co., 243 NLRB 596 (1979), the Board found that an employer impliedly promised its employees increased pension benefits if they voted out the union. There, the employer went to considerable time and expense in preparing individually tailored comparison charts of pension benefits for each of its 40 employees. The charts were tailored to the age, length of service, and wage of each employee and showed the actual difference in benefits between an unidentified nonunion pension and IRA plan, and the union pension plan. Because it was common knowledge that the employer already operated a nonunion mine, employees could readily surmise to what pension plan reference was being made and could assume that, absent the union, such benefits were a distinct possibility since the employer was already paying such benefits. The Board concluded that, because of the extensive effort and individually tailored detail involved in these pension charts, employees could easily believe that the employer was doing more than just "comparing benefits." Rather, the employer was offering the better pension plan if the union lost the election.

At Viacom, the charts were not tailored for any employees. Rather, the comparisons made were between different offices in the Viacom network. Also, the charts were disseminated because of employee requests for such comparative information regarding other systems.

Finally, Ranco Inc., 241 NLRB 685 (1979), and Grede Plastics, 219 NLRB 592 (1975), also relied on by the Hearing Officer, are similarly distinguishable from this case. In both cases, the employers did more than set forth a truthful comparison of wages. In Ranco, Inc., supervisors

made explicit the constantly implied message in the employer's written communications that the unionized employees would receive increased benefits if they rejected the union. In Grede Plastics, unlike Viacom, the company stressed that all of its nonunion employees received better wages, and it invited the union employees to join the "team effort" by decertifying the union and to enjoy more benefits for doing do.

employees of wages enjoyed by other employees in other Viacom systems and made statements of historical fact concerning the yearly increases which had been given elsewhere in the past. Additionally, the Employer repeatedly made verbal disclaimers of promises in all of its meetings with employees. Finally, the comparison of wages was only one of many topics covered in letters to and conversations with the employees. Accordingly, we find that the Employer made—in regard to wage comparison—no "extraordinary efforts" that would constitute an implied promise of benefit should the employees vote out the Union. See, e.g., Dow Chemical Co., 250 NLRB 756 (1980), enforcement denied on other grounds 660 F.2d 637 (5th Cir. 1981). There-

fore, we overrule the Union's objections and certify the results of the election.

## CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Teamsters Local Union 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.